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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,256	10/18/2001	Ray D. Odom	27147	7254

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EXAMINER

GRAHAM, MARK S

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 04/04/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,256

Applicant(s)

ODOM, RAY D.

Examiner

Mark S. Graham

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3711

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-13, 15-22, 24-31, 33-36, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rusnak in view of Elings et al. (Elings). Rusnak discloses the claimed apparatus and method with the exception of the manner in which the virtual golf ball is created. However, as disclosed by Rusnak other means may be used to create the golf ball. Elings discloses such a means for creating virtual objects. In view of Rusnak's teaching it would have been obvious to have used Elings device to create the golf ball.

Claims 5, 14, 23, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1, 10, 19, and 28 respectively above, and further in view of Curchod. As disclosed by Curchod it is known in the art to provide a movable tee so that the position of the ball on such training devices may be adjusted. It would have been obvious to one of ordinary skill in the art to have provided the same for the Rusnak/Elings' device in the same manner to provide for different golf ball settings on the turf.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 28 above, and further in view of Lederer. Claim 37 is obviated for the reason explained above with the exception of the adjustably connected standing surface. However, as disclosed by Lederer such are known in the art. It would have been obvious to one of ordinary skill in the art to have included such with Rusnak's device as well for its inherent purpose.

Art Unit: 3711

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 28 above, and further in view of Pelz. As disclosed by Pelz it is known in the art to provide devices such as Rusnak's with wheels and handles for purposes of transportation. It would have been obvious to one of ordinary skill in the art to have included such on Rusnak's device for the same reason.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rusnak clearly teaches that the ball may be a virtual ball and that the means disclosed for creating the virtual ball is not limiting by stating that other means for presenting the ball may be utilized. Rusnak states that "any conventional form of captive or dummy ball may be utilized" and then describes one example of a captive ball. No other examples of dummy balls are given but armed with the knowledge that a virtual ball may be used and that various means may be used to present a ball the ordinarily skilled artisan would obviously have considered other means of presenting a ball. Elings is particularly directed at creating virtual objects in general (See Col. 1, paragraph 2) and is not strictly limited to jewelery. As such the ordinarily skilled artisan would clearly consider Elings when faced with the problem of presenting a virtual ball.

Art Unit: 3711

Applicant's arguments filed 1/30/03 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 703-308-1355.

MSG
3/28/03



Mark S. Graham
Primary Examiner
Art Unit 3711